

Purchasing Terms and Conditions of Keller & Kalmbach GmbH

I. General – Scope

- 1) Order for deliveries and services shall solely be effected on the basis of these Purchasing Terms and Conditions. We shall not accept opposing terms and conditions of the supplier or those differing from our Purchasing Terms and Conditions, unless we have explicitly agreed to these in writing. Our Purchasing Terms and Conditions shall also be applicable if we unconditionally accept the goods of the supplier upon knowledge of opposing terms and conditions of the supplier or of those differing from our Purchasing Terms and Conditions.
- 2) These Purchasing Terms and Conditions shall also apply for all future business dealings with the supplier provided that the business dealings in question are of the same nature.
- 3) Our Transportation and Delivery Terms and Conditions shall be applicable for the transportation and delivery of the ordered goods (these are available at www.keller-kalmbach.com). Compliance with these is essential.

II. Offer – Offer Documents

- 1) The supplier shall be obligated to accept our order within a timeframe of two weeks. After this deadline, we shall be entitled to cancel the orders.
- 2) In the quoting process, the supplier shall be obligated to precisely adhere to the request of Keller & Kalmbach. In the event that the supplier deviates from the request he shall expressly indicate this deviation.
- 3) Changes made to or amendments of an order shall only come into effect if we have agreed to this in writing. Payments as well as the acceptance of deliveries and services do not constitute an agreement.
- 4) We reserve the rights to title and copyright of illustrations, drawings, calculations, other documents and materials that were made available to the supplier in line with the quoting process; they may not be made accessible to third parties without our explicit, written consent. They shall only be used for the purpose of effecting our order; upon effecting our order, they shall be returned to us without further request to do so. They shall not be disclosed to third parties.

III. Date of Delivery and Delay in Delivery

- 1) The dates of delivery specified in our orders shall be binding.
- 2) The receipt at the receiving centre specified by us shall be decisive for determining whether the deliveries and services were effected in a timely manner.
- 3) The supplier shall be obligated to inform us immediately in writing if circumstances occur or he becomes aware of any circumstances that result in the stipulated date of delivery not being met. In doing so, the reasons for and the estimated duration of the delay shall be specified.
- 4) In the event that the supplier should culpably default by exceeding the delivery deadline, then without prejudice to other rights, we may demand a penalty for breach of contract for every commenced day of delay in the amount of 0.2 % and a maximum of 10 % of the value of the goods delayed in delivery. The supplier shall be responsible for supplying onus of proof for non-negligence.
- 5) In the event that the assertion of the penalty for breach of contract is not effected upon acceptance of a late delivery or service it may still be made up until the final payment.
- 6) Furthermore, in the event of a delay in delivery we shall be entitled to the statutory rights. In particular, after the expiry of a reasonable period of time and taking the penalty for breach of contract into account, we shall be entitled to claim for compensation for damages instead of the service as well as withdraw. In the event that we claim for damages, the supplier shall be entitled to prove that he is not responsible for the breach of duty. In the event of delay in delivery, we shall be entitled to withdraw from the contract after the expiry of a reasonable period of time determined by us and independent of negligence of the supplier. The requirement to determine the grace period shall not be applicable if it is apparent that the supplier shall not be able to meet the deadline.
- 7) Keller & Kalmbach reserves the right to refuse acceptance of the entire delivery in the event of excess supply of more than 10 %. Returns are effected at the expense of the supplier.
- 8) In the event of early delivery, Keller & Kalmbach reserves the right to return the goods at the expense of the supplier or to refuse the acceptance of goods. In the event that Keller & Kalmbach accepts the goods, they shall be stored until the agreed date of delivery at the supplier's risk and expense.
- 9) In the event that the goods are delivered more than 15 days prior to the delivery date stated on our order, we reserve the right to determine that the terms of payment shall only be applicable from the date of delivery specified by us.
- 10) Underdeliveries (especially partial deliveries, unless explicitly requested or accepted by us), wrong deliveries, defective or damaged goods, billing errors and other errors result in additional time and effort and corresponding costs for us. We shall charge these costs to the supplier at additional flat rates of EUR 50 to EUR 150, depending on the time and effort invested. We reserve the right to assert of additional charges or damages. The supplier has the right to prove lower expenses or damage. In the event of an underdelivery of max. 5 %, we shall be entitled to accept the underdelivery and to cancel the missing goods.

IV. Transfer of Risk and Shipping

- 1) The transfer of risk shall only be effected upon delivery and after successful unloading at the receiving centre specified by us.
- 2) Unless otherwise agreed, delivery and packaging costs, costs of transportation insurance, fees, taxes and other levies shall be payable by the supplier. In the event of delivery ex works or ex warehouse of the supplier, the shipment shall be dispatched at the lowest cost.
- 3) All shipments shall be accompanied by documentation in accordance with our delivery regulations. We may refuse deliveries that are not accompanied by the required supporting documents. In the event that we accept such deliveries, we shall be entitled to invoice the supplier the additional time and effort invested for processing.

V. Invoicing and Terms of Payment

- 1) The price stated in the order is binding. Unless otherwise agreed in writing, the price shall include free delivery and packaging. Returning the packaging requires a separate agreement.
- 2) We shall only be able to process invoices if these accordingly indicate the stated order number and other order details specified in our order or our Delivery Terms and Conditions. The supplier shall be responsible for all consequences resulting from failure to comply with this obligation (such as payment default), unless he proves that he is not responsible for these.

- 3) Upon complete delivery or respectively acceptance and receipt of invoice, payments shall be effected on the 25th day of the following month after delivery less 3 % discount or after 90 days without a discount. The discount deduction shall also be permissible if Keller & Kalmbach balances or withholds payments due to defects.
- 4) Depending on Keller & Kalmbach's choice of method of payment, payments shall either be effected via non-negotiable cheque or bank account transfer. The incoming mail stamp or the receipt of the payment order at the bank or post office shall be decisive for determining the timely payment.
- 5) In the event that the supplier is a contractor, the orderer shall only then fall into arrears with payments if he does not pay upon receiving a reminder from the supplier, which is effected after expiration of the due date.
- 6) We shall be entitled to offsetting and retention rights to the extent permitted by the law.

VI. Warranty

- 1) The supplier guarantees that the deliveries and services correspond to the agreed or usual specification, the relevant legal and regulatory provisions as well as the Employer's Liability Insurance Association's measures. The supplier in particular ensures that the goods supplied by him are free of prohibited substances according to the Annex to section 1 of the regulation on prohibitions and restrictions of the sales and circulation of hazardous substances, the preparation and production according to the Law on Chemical Substances in the respectively applicable statutory version, and Conflict- Minerals free sourcing. In the event of delivery of coated high-strength parts, the supplier shall assure us that the goods delivered to us have been manufactured in compliance with all applicable standards and been inspected by him.
- 2) The supplier guarantees that the delivered goods are free of defects of title, especially of third party rights.
- 3) The supplier shall be obligated to provide and maintain a state-of-the-art quality assurance based on DIN EN ISO 9001:2000 and on request, to provide evidence of this to Keller & Kalmbach. If the supplier provides Keller & Kalmbach with parts that are, according to the contract or typically, used in the automotive and rail industry, the supplier shall provide and maintain an additional quality assurance in accordance with the applicable standards (e.g. German Association of the German Automotive Industry [VDA] 6.1 (manufacturer) or 6.2 (dealer), ISO / TS 16949:2002 and DIN EN 9100), and on request, provide evidence of this. If required, the supplier and the orderer shall conclude a separate quality assurance agreement.
- 4) Incoming deliveries shall either be inspected by the buyer or respectively in the case of transfer orders, by the third party buyer as to determine whether they comply with the quantity and the type ordered and whether externally visible transport damages or externally visible faults can be detected. In this process, objection to the defects identified shall be considered effected in a timely manner if it is dispatched within five days after delivery of the delivery item. We reserve the right to carry out inspections exceeding those specified in sentence 1 and to give notice of defects accordingly even after the five-day period. We shall report hidden defects immediately after discovery thereof.
- 5) In the event of defects in the goods, regardless of our other statutory warranty rights, we shall at our choice in particular be entitled to demand rectification of the defects discovered or to demand a replacement delivery. In the event that the supplier refuses such a subsequent performance or danger is imminent, Keller & Kalmbach may have the discovered defects rectified or obtain a replacement at the supplier's expense. In non-urgent cases, Keller & Kalmbach shall undertake to discuss and agree on the rectifying measures with the supplier. Keller & Kalmbach shall have the right to choose the subsequent performance even regarding contracts for work and services.
- 6) The limitation period for defects of title and material defects shall be 36 months and begins with the transfer of risk.
- 7) If the supplier provides a replacement or rectifies the defect in the framework of its subsequent performance, the limitation period specified in paragraph 5) shall begin to run anew, unless the supplier explicitly and correctly reserved the right to provide subsequent performance out of good will or to avoid disputes. The limitation period regarding the notified defect shall always begin to run anew both for new delivered goods as well as in the case of defective subsequent rectification.
- 8) The supplier shall bear the costs and risk for the return of defect delivery items.
- 9) Supplier's recourse: In addition to the warranty claims, Keller & Kalmbach shall be entitled to the legally determined right of recourse within a supply chain (supplier's recourse under sections 478, 479 of the German Civil Code [BGB - *Bürgerliches Gesetzbuch*]). Keller & Kalmbach shall be especially entitled to demand exactly the type of subsequent performance (repair or replacement) from the supplier that Keller & Kalmbach owes its customer in an individual case. The legal right to vote (section 439 (1) of the German Civil Code) shall not be restricted by this. Before Keller & Kalmbach accepts or fulfils a warranty claim for defect made by the customer (including reimbursement of expenses according to sections 478 (3) and 439 (2) of the German Civil Code) it shall notify the supplier and by providing a brief description of the facts, request a written statement. In the event that the statement is not effected within a reasonable period of time and if no amicable solution has been determined, the actual warranty claim accorded by Keller & Kalmbach shall be considered owed to the Keller & Kalmbach customer. In this case, the supplier shall be responsible for proof of the contrary. The claims made by Keller & Kalmbach for suppliers' recourse shall also apply if the goods were processed by Keller & Kalmbach or by one of our customers, e.g. by fitting it into another product, prior to being sold to the ultimate customer.

VII. Liability

The supplier shall be liable for all breaches of contract according to the statutory provisions, unless otherwise agreed in these Terms and Conditions.

VIII. Product Liability, Indemnity and Liability Insurance Cover

- 1) In the event that the supplier is responsible for product damage, he shall be obligated to indemnify us from claims for damages filed by third parties upon our first request if the cause is within his control and sphere of responsibility and he is liable towards third parties.
- 2) In the framework of his liability for damages as defined by paragraph 1), the supplier shall also be obliged to reimburse any expenses according to

sections 683, 670 or section 830, 840, 426 of the German Civil Code, which arise under or in connection with a recall action carried out by us. If possible and reasonable, we shall inform the supplier of the contents and scope of the recall measures that are to be carried out and give him the opportunity to comment. Other legal claims remain unaffected.

3) The supplier shall commit to maintain a product liability insurance at an insured sum of EUR 1.5 million per personal injury / property damage; in the event that we are entitled to further claims for damages, these shall remain unaffected. The product liability insurance must cover both the increased product risk including damage abroad, recall passenger car action as well as the risk of waiving the objection of a delayed notice of defects.

IX. Assignment of Claims

1) The transfer of existing claims against Keller & Kalmbach shall only be permissible with our written consent.

2) Transferring an order or essential parts thereof to third parties without the written consent of the orderer shall not be permissible and entitles him to withdraw from the contract in whole or in part or to claim for damages.

X. Special Right to Termination

If there are reasonable grounds to believe that the supplier shall not provide complete or timely performance, in particular because an insolvency administrator or the assets of the supplier have been subjected to insolvency proceedings, then we shall be entitled to withdraw from the contract in whole or in part.

XI. Miscellaneous

1) The supplier may only advertise our business connection with our written consent.

2) Keller & Kalmbach shall treat the personal data of the supplier in accordance with the German Data Protection Act [Bundesdatenschutzgesetz].

3) For the purpose of these Terms and Conditions, emails and faxes may be used to meet the written form requirement.

4) Force majeure: Keller & Kalmbach shall not be responsible for cases such as strike, lockout, business disruption, official orders and others cases, which result in reduced usage and are furthermore considered as force majeure. In addition, in this case, Keller & Kalmbach shall be entitled to withdraw from the contract.

5) The guidelines for social responsibility in accordance with DIN EN ISO 26000 shall in principle be adhered to. This particularly refers to the prohibition of child labour: The supplier shall agree not to employ children and ensures that his own suppliers also do not employ any children under the age of 15. In the event that the legal age for children to work is 14 in the country of production, Keller & Kalmbach shall recognise this as an exception.

6) Environmental protection is a high priority at Keller & Kalmbach. For this reason, we shall expect an environmental awareness of the suppliers according to Keller & Kalmbach guidelines.

The supplier shall guarantee that the products supplied by him do not contain any substance on the so-called candidate list in accordance with Article 59 (1, 10) of the Regulation (EC) 1907/2006 ("REACH").

The supplier shall be obliged to immediately notify Keller & Kalmbach in writing, if the products delivered by him contain substances on the candidate list. This is particularly applicable in the event of amendments / addition to the candidate list.

XII. Special Provision for International Orders

The language of the contract shall be German. If the contracting parties use other additional languages, the German wording shall have priority.

XIII. Origin of Goods, Preferences and Regulations in International Trade

The supplier shall be obligated to provide a single or long-term supplier's declaration with the business documents for all goods delivered by him to Keller & Kalmbach. In these business documents the legal preference status of the goods (including country of origin) shall be confirmed. In the event of breach of this obligation or incorrectly issued declarations, the supplier shall be liable to Keller & Kalmbach for all resulting damages.

The supplier shall be obliged to check whether its products are subject to International trade bans, restrictions and / or licensing requirements (e.g. regarding the export list, Dual-Use Regulation, U.S. Re-export Regulations, Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, Section 1502 etc.) and, if applicable, to correspondingly indicate these in his quotations, order confirmations and all accompanying documents with verifiable data. In the event of breach of this obligation, the supplier shall be liable to Keller & Kalmbach for any resulting damages, including additional claims of foreign import duties, fines and the like.

XIV. The Use of Keller & Kalmbach's Brand Names

If the goods are returned or not accepted by Keller & Kalmbach and these are labelled with the Keller & Kalmbach's brand name or the Keller & Kalmbach logo, these may not be sold to third parties. A penalty for breach of contract in the amount of the double value of the goods and a minimum of EUR 20,000 shall be applicable for each violation of this obligation.

XV. Applicable Law, Arbitration and Place of Jurisdiction

1) The laws of the Federal Republic of Germany shall govern the relation with suppliers who have their official business location in the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods. The laws of the UN Convention on Contracts for the International Sale of Goods (CISG from 11 April, 1980) shall govern relation with suppliers who have their business location outside of the Federal Republic of Germany. If the CISG does not contain any relevant regulations, the laws of the Federal Republic of Germany shall apply.

2) In the event of dispute arising from the contract, if the supplier is based in the Federal Republic of Germany and is a merchant, the legal action shall be brought before the court that is responsible for the location of Keller & Kalmbach's headquarters. However, Keller & Kalmbach shall also be entitled to take legal action against the supplier at any other admissible location.

3) All disputes arising in connection with these Terms and Conditions or the validity thereof or from contracts on which these Terms and

Conditions are based and which exist with a supplier who has his official business location outside of the Federal Republic of Germany shall be finally decided by one or more arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC). Recourse to the courts shall be definitely excluded. However, Regulation (EC) No.1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure shall remain permissible.

XVI. Severability Clause

Should any of the aforementioned, agreed clauses become wholly or partially invalid, the validity of the remaining Purchasing Terms and Conditions shall not be affected. The parties agree that any such invalid clause shall be replaced by an effective one that comes closest to the meaning and the purpose of the invalid clause.

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Managing Directors: Dr. Florian Seidl (having sole power of representation),
Rudolf Karl, Thomas Obermeyer (authorised to represent together with a proxy).
Munich Registry Court, HRB 54200

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